1948 File No. Molasses II

Legal DEPARTMENT 48

K B BRANCH

Subject:—

Rules and Notfecation under the Bombay Molasses Act, 1947

P 2 (F)

File No. Molasses II

48

142-B

CONTENTS.

Legal Department No. Molasses II/48.

Tr.No.	R.I./ O.No.	Subject.	Pages.
		Rules & Notifications under the [illegible] Molasses Act, 1947.	
1030 30/1/48.		Sec. 5(3) - Deduction of ... & what.or provisions on the lines of... should be inserted in the Act.)	1-3.

Madhav Reddi.m.
21/5.

c/6.

A/ 21/5

21/5

Office of the N.L.A.

There is no objection to retain clause (3) of section 5 of the Dairy Produce Act, 1947, as proposed by the Council above. The question whether a provision like clause (3) of section 5 of the Tobacco Act should be inserted in the Dairy Produce Act of 1942, was considered in the Advocate General's opinion of 10-4-1942. The Advocate General did not think it necessary that a provision should be inserted in the Act; but as a matter of precaution he felt that the proposed clause to avoid the possibility of the contention that the Act would offend against section 87(1) of the Government of India Act. The present question as proposed to the Government of India is whether only [illegible] clause (3) of section 5 of the Tobacco Act of 1947. The proposed Dairy Produce Act, 1947, intends, as it does, to control the export, sale and possession of butter. In view of the definition clause "export" means [illegible] "within the province". The Act is not open to any objection on the ground of repugnancy. Section 1 is an enabling section and does not create offences. In truth the object of the Act is to control the export, sale and possession of butter in order to prevent its use for illicit manufacture of liquor and, incidental effect it may have on dairy industry, does not alter the character of the law. The only question is whether the Dairy Council have full discretion in each case, or should a certain class of cases be excluded from the operation of the Act by a direct attribute to the Act specifically to its true character. [illegible]

Looked at in its true light the substance of the Act is the control of transport, sale and possession of molasses and therefore it does not matter if incidentally it affects import or export. It is not therefore necessary to have any provision of the kind contained in sub-section(3) of section 5 of the Molasses Act. That sub-section may therefore be deleted. However, by way of caution the Advocate General will be consulted if R.D. so desires In another case a similar point is being referred to the Advocate General.

2. As regards the license fees, if the license fees are fixed out of all proportion to the cost incurred in the duty of licensing with the supervision and regulation which it implies, the Courts might hold that the fees are not real licesne fees. If R.D.is satisfied that that they are not so fixed, they will not be open to objection but it will not be possible to levy the license fees on graded scale as proposed. As already pointed out in para. 3 of R.L.A's opinion at pages 263-65 ante, the levy of license fees on a graded schale will amount to levying an excise duty on the godds. It is true, as pointed out at page 278 ante, the G.R.R.D. No. 3721/39, dated 12-2-1945 has prescribed the graded scale of fees; but those fees would be permissible in view of entry 40 in List II under which the Province can levy duty of excise on alcholic liquors for humna consumption. Under that entry duties of excise cannot be levied on molasses.

sd/- P.ML. 29/1.

Remembrancer of Legal Afairs.

U. R. to R.D. No.1030 dated the 30th January 1948,

Madhav Raokadam.
19/5.

c/5.